

O. GROUP EXEMPTIONS

Introduction

The following provides a discussion on new developments and proposed changes in the group exemption area.

1. Recent Significant Developments

Two major changes have recently occurred in group exemption procedures. First, in 1977 the handling of group exemption applications was decentralized from the National Office to the 19 key districts. See Rev. Proc. 77-38, 1977-2 C.B. 571. At the same time, the group exemption files, which were in the National Office, were distributed to the key districts having jurisdiction over the parents. The central organization submits a report each year to the appropriate service center of changes, additions to, and deletions from the group roster. This information is ultimately sent to the key district of jurisdiction for inclusion in the group exemption file. The second change, which is still in the process of completion, is the decentralization of service center control over group returns. At the present time, seven service centers, Andover, Atlanta, Austin, Cincinnati, Fresno, Ogden, and Philadelphia, provide group exemption service to the 19 key districts. In May, 1980, Brookhaven and Kansas City will begin processing group returns, thus completing this decentralization program.

Rev. Proc. 79-3, 1979-2 I.R.B. 29, concerns changes in accounting periods and modifies Rev. Proc. 76-10, 1976-1 C.B. 548, to indicate that central organizations wishing to change the accounting periods of subordinates may do so by filing Form 1128 with their service center rather than their key District Director. Furthermore, it provided an expanded section requiring the central organization to file Form 1128 on or before the 15th day of the second calendar month following the close of the short period.

There is one further change now under consideration in the National Office. Present procedures provide that central organizations submit the supplemental information for their groups within 45 days following the end of their annual accounting period. The service centers receive this information and make all necessary changes to the EOMF. It has been found that the annual returns sometimes arrive at the service centers with, or shortly after, the supplemental reports. If the service center has not yet updated the EOMF, unnecessary

unpostables appear, duplicate EIN's are generated, and much time is expended in corresponding with central organizations and otherwise tracking down unpostables. A proposed change to Rev. Proc. 77-38 is now in process which will require group centrals to submit their supplemental information 90 days before the end of this period. This should give the service centers enough time to update the records and cut down the great number of unpostable returns. If it is approved, it should save both the Service and the affected organization time and correspondence that is otherwise unnecessary.

2. The Group Exemption Program

When dealing with group exemption applications and other issues arising in this area, it is well to remember that the entire group exemption program is an administrative procedure, devised by the Service, to ease the burden of individually processing as many as a million exemption applications, returns, and reports by processing some 3,000 group applications. Each subordinate in a group, as well as the central organization, is subject to the same laws as organizations holding individual exemptions under the same Code sections. The only difference is that subordinates provide information about themselves to their central organizations rather than to the Service. It is the responsibility of the central to see that the information is complete and certify to the Service that each subordinate is qualified. If, from the information supplied by the central organization, it appears that one or more subordinates may not meet the requirements, the group determination letter should except these subordinates and recognize the remainder of the group. Those excepted subordinates could then make application for recognition of exemption on an individual basis. For example, if the information supplied by the central organization indicated that certain subordinates did not have proper governing instruments or were not located in cypres states, those subordinates would be specifically excepted from the group exemption letter.

3. Matters Involving Subordinate Organizations

Subordinate organizations are examined from time to time and, if warranted, their exemption is revoked, and they are removed from coverage under the group exemption letter. This action will not affect the status of the other members of the group.

Rev. Proc. 77-38 clarified the requirement that subordinates must meet the 15 month rule in IRC 508(a) by requiring central organizations to certify that the subordinates were organized within 15 months of the date the application was

filed. If the central cannot make this certification for one or more subordinates that it wants included, effective date of the group letter exemption for all subordinates is the date the application was sent to the Service. In filing group returns, a central organization may only include those subordinates that provided the proper information and authorized the central to include them. A central does not have to file a group return for all subordinates. Those subordinates required to file that are not included in a group return must file individual returns. Subordinates that did not have \$10,000 gross income would not be included in the group return.

When a subordinate withdraws from a group exemption, it is no longer recognized as exempt. It must establish its own exemption on an individual basis. If described in IRC 501(c)(3), it has, in effect, satisfied the 15 month rule of IRC 508(a) but must, nevertheless, file a Form 1023 to establish individual exemption. Individual exemption would be effective from the date the subordinate was withdrawn from the group. If establishing status under IRC 509(a)(1) and 170(b)(1)(A)(vi), it would, however, use the immediate preceding four year period to show its public support, or whatever part of those four years it was in existence. In other words, it would be considered a "new" organization under IRC 508(a) but would not be required to receive an extended advance ruling for IRC 170(b)(1)(A)(vi) purposes.

4. Rev. Proc. 77-38, 1977-2 C.B. 571

The text of Rev. Proc. 77-38 is extracted below:

Rev. Proc. 77-38

SECTION 1. PURPOSE

The purpose of this Revenue Procedure is to supersede

Rev. Proc. 72-41, 1972-2 C.B. 820, by setting forth revised procedures under which recognition of exemption from Federal income tax under section 501(c) of the Internal Revenue Code of 1954 may be obtained on a group basis for subordinate organizations affiliated with and under the general supervision or control of a central organization. This procedure relieves each of the subordinates covered by a group exemption letter from filing its own application for recognition of exemption.

SEC. 2. ISSUANCE OF GROUP EXEMPTION LETTERS

.01 Under this Revenue Procedure, and Rev. Procs. 72-4, 1972-1 C.B. 706, and 76-33, 2 C.B. 655, the Internal Revenue Service will consider requests of central organizations for group exemption letters.

.02 A subordinate included in a group exemption letter should not apply separately for recognition of exempt status unless it no longer wants to be included in the group exemption letter.

.03 A subordinate that is organized and operated in a foreign country may not be included in a group exemption letter.

.04 A subordinate described in section 501(c)(3) of the Code may not be included in a group exemption letter if it is a private foundation defined in section 509(a). Such an organization should apply separately for recognition of exempt status under the procedures outlined in Rev. Proc. 76-34, 1976-2 C.B. 656.

SEC. 3. DEFINITIONS

.01 A group exemption letter is a ruling or determination letter issued to a central organization recognizing on a group basis the exemption under section 501(c) of the Code of subordinate organizations on whose behalf the central organization has applied for recognition of exemption in accordance with this Revenue Procedure.

.02 A central organization is an organization that has one or more subordinates under its general supervision or control.

.03 A subordinate is a chapter, local, post, or unit of a central organization. It may or may not be incorporated but it must have an organizing document. A central organization may be a subordinate itself, such as a state organization which has subordinate units and is itself affiliated with a national organization.

SEC. 4. REQUIREMENTS FOR INCLUSION IN A GROUP EXEMPTION LETTER

.01 A central organization applying for a group exemption letter must obtain recognition of its own exempt status.

.02 It must also establish that the subordinates to be included in the group exemption letter are:

1. Affiliated with it;
2. Subject to its general supervision or control;

3. All exempt under the same paragraph of section 501(c) of the Code, though not necessarily the paragraph under which the central organization is exempt;

4. Not private foundations, if the application for a group exemption letter involves section 501(c)(3); and

5. Organizations that have been formed within the 15-month period prior to the date of submission of the group exemption application, if they are claiming section 501(c)(3) status and are subject to the requirements of section 508(a).

.03 Each subordinate must authorize the central organization to include it in the application for the group exemption letter. The authorization must be signed by a duly authorized officer of the subordinate and retained by the central organization while the group exemption letter is in effect. In the case of a new organization described in section 501(c)(3) of the Code that wants to be included in a group exemption, it must submit its authorization before the end of the fifteenth month after it was formed in order to satisfy the requirement of section 508(a). The central organization must also include this subordinate in its next annual submission. (See SEC. 6.)

SEC. 5. FILING APPLICATION FOR A GROUP EXEMPTION LETTER

.01 A central organization seeking a group exemption letter for its subordinates must obtain recognition of its own exemption by filing an application with the key District Director of Internal Revenue for the area in which is located the principal place of business or principal office of the organization. Any application received by the National Office or by a District Director other than as provided above will be forwarded, without action, to the appropriate key District Director.

.02 If the central organization is recognized as exempt, it must indicate its employer identification number EIN, the date of the letter recognizing its exemption, and the Internal Revenue Office that issued it. It need not resubmit documents already submitted. However, if it has not already done so, it must submit a copy of any amendment to its governing instruments or internal regulations as well as any information regarding any change in its character, purposes, or method of operations.

.03 In addition to the information required to obtain recognition of its own exemption, the central organization must submit to the key District Director the following information on behalf of those subordinates to be included in the group exemption letter:

1. A letter signed by a principal officer of the central organization setting forth or including as attachments:

(a) Information verifying the existence of the relationships required by SEC. 4.02;

(b) A sample copy of a uniform governing instrument (charter, trust indenture, articles of association, etc.) adopted by the subordinates; or, in the absence of a uniform governing instrument, copies of representative instruments;

(c) A detailed description of the purposes and activities of the subordinates including the sources of receipts and the nature of expenditures;

(d) An affirmation that, to the best of the officer's knowledge, the purposes and activities of the subordinates are as set forth in (b) and (c) above;

(e) A statement that each subordinate to be included in the group exemption letter has furnished written authorization to the central organization as described in SEC. 4.03 above;

(f) A list of subordinates to be included in the group exemption letter to which the Service has issued an outstanding ruling or determination letter relating to exemption;

(g) If the application for a group exemption letter involves section 501(c)(3) of the Code, and is subject to the provisions of section 508(b), an affirmation to the effect that, to the best of the officer's knowledge and belief, no subordinate to be included in the group exemption letter is a private foundation as defined in section 509(a); and

(h) For each subordinate that is a school claiming exemption under section 501(c)(3), the information required by Rev. Proc. 75-50, 1975-2 C.B. 834. Also, there must be included such other information necessary to establish that the school is complying with the requirements of Rev. Rul. 71-447, 1971-2 C.B. 230. This is the same information required by Schedule A, Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code.

2. A list of the names, mailing addresses (including Postal Zip Code), actual addresses if different, and employer identification numbers of subordinates to be included in the group exemption letter. A current directory of subordinates may be furnished in lieu of the list if it includes the required information and if the subordinates not to be included in the group exemption letter are identified.

.04 If the central organization does not have an employer identification number, it must submit a completed Form SS-4, Application for Employer Identification Number, with its exemption application. See Rev. Rul. 63-247, 1963-2 C.B. 612.

.05 Each subordinate must have its own employer identification number even if it has no employees. The central organization must submit with the exemption application a completed Form SS-4 on behalf of each subordinate not having a number.

SEC. 6. INFORMATION REQUIRED ANNUALLY TO MAINTAIN A GROUP EXEMPTION LETTER

.01 In order to maintain a group exemption letter, the central organization must submit annually, within 45 days after the close of its annual accounting period, to the Internal Revenue Service Center indicated in .02 below, the following information:

1. Information regarding all changes in the purposes, character, or method of operation of subordinates included in the group exemption letter.

2. Lists of (1) subordinates that have changed their names or addresses during the year, (2) subordinates no longer to be included in the group exemption letter because they have ceased to exist, disaffiliated, or withdrawn their authorization to the central organization, and (3) subordinates to be added to the group exemption letter because they are newly organized or affiliated or they have newly authorized the central organization to include them. A separate list must be submitted for each of the three categories set out above. Each list must show the names, mailing address (including Postal ZIP Codes), actual address if different, and employer identification numbers of the affected subordinates. An annotated directory of subordinates will not be accepted for this purpose. If there were none of the above changes, the central organization must submit a statement to that effect.

3. The information required by SEC. 5.031(a) through (h) above, with respect to subordinates to be added to the group exemption letter. However, if the information upon which the group exemption letter was based is applicable in all material respects to such subordinates, a statement to this effect may be submitted in lieu of the information required by items (a) through (d) of SEC. 5.031.

.02 (1) If the central organization is located in Indiana, Kentucky, Michigan, Ohio, or West Virginia, send the report to the Internal Revenue Service Center, Cincinnati, Ohio 45298.

(2) If the central organization is located in Maine, New Hampshire, Vermont, Connecticut, Massachusetts, or Rhode Island, send the report to the Internal Revenue Service Center, 310 Lowell Street, Andover, Massachusetts 01812.

(3) If the central organization is located in California, Hawaii, Arizona, Utah, or Nevada, send the report to the Internal Revenue Service Center, 5045 East Butler Avenue, Fresno, California 93888.

(4) Central organizations located elsewhere send the report to the Internal Revenue Service Center, 11601 Roosevelt Boulevard, Philadelphia, Pennsylvania 19155.

.03 Submission of the information required by this section does not relieve the central organization or any of its subordinates of the duty to submit such additional information as a District Director may require to determine whether the conditions for continued exemption are being met. See sections 6001 and 6033 of the Codes), and regulations thereunder.

SEC. 7. CIRCUMSTANCES UNDER WHICH A GROUP EXEMPTION LETTER WILL CEASE TO HAVE EFFECT

.01 Continued effectiveness of a group exemption letter is based on the following conditions:

1. Continued existence of the central organization.
2. Continued qualification of the central organization for exemption under section 501(c) of the Code.
3. Annual submission by the central organization of the information required by SEC. 6.
4. Annual filing by the central organization of an information return if one is required of it under section 6033.

.02 Continued effectiveness of a group exemption letter as to a particular subordinate is based on the conditions set out in .01 and the following conditions:

1. Continued conformity by the subordinate to the requirements for group exemption set out in SEC. 4.02 and 4.03.
2. Annual filing of an information return for the subordinate if one is required of it under section 6033 of the Code.

.03 A group exemption letter shall cease to have effect either as to a particular subordinate or to the group as a whole, when:

1. The central organization notifies the Service that it is going out of existence.

2. The central organization notifies the Service, by its annual submission described in SEC. 6 or otherwise, that any of its subordinates will no longer fulfill the conditions set out in .02 of this section.

3. The Service notifies the central organization or the affected subordinate that the group exemption letter shall cease to have effect as to some or all of the group because the conditions set out in .01 or .02 have not been fulfilled.

.04 When notice is given under .03 above, the Service will not thereafter recognize the exempt status of the affected subordinates unless and until they file separate applications on their own behalf, or the central organization files complete supporting information for their reinclusion in the group exemption at the time of its annual submission.

.05 When notice is given by the Service as described in .03 of this section, and withdrawal of recognition is based on a failure to come within the description of the particular sub-paragraph of section 501(c) of the Code, the effective date will be governed by SECTION 11.01 of Rev. Proc. 72-4. Such notice will be given after completion of the appeal procedures set out in Rev. Proc. 76-33.

SEC. 8. INSTRUMENTALITIES OR AGENCIES OF POLITICAL SUBDIVISIONS

An instrumentality or agency of a political subdivision that exercises control or supervision over a number of organizations similar in purposes and operations, each of which may qualify for exemption under the same paragraph of section 501(c) of the Code, may obtain a group exemption letter covering those organizations in the same manner as a central organization. However, the instrumentality or agency must evidence that it is a qualified governmental agency. Examples of organizations over which governmental agencies exercise control or supervision are Federal credit unions, State chartered credit unions and Federal land bank associations.

SEC. 9. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 72-41, 1972-2 C.B. 820 is superseded.

SEC. 10. EFFECTIVE DATE

This Revenue Procedure is effective October 17, 1977, the date of publication in the Internal Revenue Bulletin.